Supreme Court, U.S.
FILED

No. 011571

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In The Supreme Court of the United States

JOHN AARON DUHON, et al.,

Petitioners,

v.

POLICE JURY OF VERMILLION PARISH, LOUISIANA, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Did the Petitioners present evidence on the Respondents' motion for summary judgment raising a genuine issue of material fact as to whether there existed a conspiracy to effect an extra-legal change in the Petitioners' parish of residence in violation of the Petitioners' rights under the United States Constitution?

LIST OF PARTIES TO PROCEEDINGS BELOW

The parties to the proceedings before the United States Court of Appeals are the following:

John Aaron Duhon – Plaintiff-Appellant;
Bobby Duhon – Plaintiff-Appellant;
Linda Deshotels Duhon – Plaintiff-Appellant;
Dirk D. Duhon – Plaintiff-Appellant;
Christina D. Duhon – Plaintiff-Appellant;
Ronous J. Duhon – Plaintiff-Appellant;
Glenda G. Duhon – Plaintiff-Appellant;
Sidney L. Duhon – Plaintiff-Appellant;
Christine A. Duhon – Plaintiff-Appellant;
Grace D. Hackney – Plaintiff-Appellant;
James H. Hackney – Plaintiff-Appellant;
Masil Mire – Plaintiff-Appellant;
Ellis Mire Jr. – Plaintiff-Appellant;
Vickie D. Badeaux – Plaintiff-Appellant;
Larry Badeaux – Plaintiff-Appellant;
Bradley Duhon – Plaintiff-Appellant;
Sharon Duhon – Plaintiff-Appellant;
Richard Duhon – Plaintiff-Appellant;
Vickie Duhon – Plaintiff-Appellant;
Ella M. Duhon--Plaintiff-Appellant;
Thomas LeBlanc – Plaintiff-Appellant;
Dina LeBlanc – Plaintiff-Appellant;
Nell R. LeBlanc – Plaintiff-Appellant;
John A. LeBlanc – Plaintiff-Appellant;

Adola A. Duhon – Plaintiff-Appellant;
Police Jury of Vermilion Parish, Lousiana –
Defendant-Appellee;
Ritter Trahan-Defendant-Appellee;
Carroll Duhon-Defendant-Appellee;
Hubert Faulk-Defendant-Appellee;
Minos Broussard-Defendant-Appellee;
Terry Bessard-Defendant-Appellee;
Mark Poche-Defendant-Appellee;
E.J. Broussard-Defendant-Appellee;
Edval J. Simon Jr.-Defendant-Appellee;
Kenneth Dehart-Defendant-Appellee;
Louis Joe Hardy-Defendant-Appellee;
Purvis Abshire-Defendant-Appellee;
T.J. Prejean Jr.-Defendant-Appellee;
Michael J. Bertrand-Defendant-Appellee;
Eugene Sellers-Defendant-Appellee;
Malcom B. Price Jr.-Defendant-Appellee;
Pervis Meaux-Defendant-Appellee;
Luther Hardee-Defendant-Appellee.

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OPINIONS BELOW

The per curiam opinion and order of the United States Court of Appeals for the Fifth Circuit affirming the judgment of the United States District Court for the Western District of Louisiana is not reported, but is set forth in the Appendix beginning at A-1. The memorandum ruling of the United States District Court for the Western District of Louisiana, filed March 27, 2001, is not reported, but is set forth in the Appendix beginning at A-11. The judgment of the United States District Court for the Western District of Louisiana, filed June 27, 2001, is not reported, but is set forth in the Appendix beginning at A-6. The memorandum ruling and judgment of the United States District Court for the Western District of Louisiana, filed July 17, 2001, is not reported, but is set forth in the Appendix beginning at A-8.

STATEMENT OF JURISDICTION

The order of the United States Court of Appeals for the Fifth Circuit affirming the District Court judgment in favor of the Respondents was filed January 31, 2002 (A-1). This Court has jurisdiction to review the order of the Court of Appeals by writ of certiorari under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. XIV, § 1 provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Fed. R. Civ. P. 56 (b) and (c) provide as follows:

> (b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Article 6, § 1 of the Louisiana Constitution provides as follows:

(A) Parishes and Boundaries Ratified. Parishes and their boundaries as established on the effective date of this constitution are recognized and ratified. (See par. 10).

(B) Creation; Dissolution; Merger; Boundaries. The legislature by law may establish and organize new

parishes, dissolve and merge parishes, and change parish boundaries if approved by two-thirds of the electors in each parish affected voting thereon at an election held for that purpose.

La. R.S.A. §§ 33:141, 33:142, and 33:145 (West 1988) provide, in relevant parts, as follows:

> § 141. Authorizing special election to change parish boundary
>
> Whenever the police jury of any parish passes an ordinance changing a boundary line between it and any adjoining parish, it shall serve the president of the police jury of the adjoining parish with a copy of the ordinance. If the police jury of the second parish concurs in the object and purposes of the ordinance, both police juries shall pass ordinances providing for special elections to be held in both parishes within sixth days from the passage of the ordinances.
>
> § 142. Police jury to arrange for special election; appointment of commissioners and clerk

All qualified electors in the two parishes may vote at the special election. The police juries of the respective parishes shall appoint for each polling place three commissioners and one clerk of election (all of whom shall be registered voters); designate the polling places; and provide the ballot boxes, ballots and necessary blanks for tally sheets.

* * *

§ 145. Two-thirds vote favoring change required

If two-thirds of the total vote cast at the election in each parish is in favor of the ordinance changing the boundary line, then the boundary line shall be changed as set forth in the ordinance.

La. R.S.A. § 50:221 (West 1987) provides as follows:

§ 221. Fixing parish boundary

Whenever the governing authority of any parish desires to ascertain and fix the boundary line of any adjoining parish, it

shall pass an ordinance to that effect fixing a time and place for starting the running of the boundary. It shall then serve the presiding officer of the governing authority of the adjoining parish with a copy of the ordinance and with notice, at least six months in advance, of the time and place of starting the running of the boundary.

The surveyors appointed for that purpose, or, if there were none specifically appointed, the parish surveyors of both parishes shall, at the time fixed proceed to the running and marking of the boundary line. If the surveyor of either parish fails to attend at the time and place fixed, the other surveyor shall wait two days and if the first does not arrive within that time shall proceed to the running and marking of the boundary line.

STATEMENT OF THE CASE

The instant action was brought by the Petitioners against the Respondents seeking relief under 42 U.S.C. § 1983 for deprivations of rights secured by the Constitution and laws of the United States and for relief under state law arising out of the same transactions and occurrences. The complaint alleged that the

Respondents, the Police Jury of Vermilion Parish, Louisiana, individual officers of the Police Jury (hereinafter "the Vermilion Defendants") and Malcolm Price, Chairman of the Louisiana Tax Commission, had conspired with the Consolidated Government of Lafayette, Louisiana, individual officers of the Consolidated Government (hereinafter "the Lafayette Defendants), the Attorney General of Louisiana, an Assistant Attorney General, the Registrar of Voters for Lafayette and Vermilion, Louisiana, Parishes, and an officer in the Louisiana State Land Office (hereinafter "the State Defendants"), and other persons to effect a covert and extra-legal change of the lawfully established boundary between Lafayette and Vermilion Parishes.

The Petitioners' operative complaint alleges that they have been residents of Lafayette Parish for many years. During their long-term residency, in the exercise of their First Amendment rights and privileges, they have engaged in a wide variety of political, social, economic, educational, religious, and cultural activities within Lafayette Parish, Louisiana, with the result that the focus of their existence and personae, individually and collectively, was and continues to be oriented to and identified with the community of people of Lafayette Parish, seeking by such activities ultimately, each in his/her own way, at his/her own time, to promote the general welfare of the community of Lafayette Parish and reciprocally to enjoy the benefits, comforts, and rewards

of associating and living with the community of people in Lafayette Parish.

Petitioners further allege that the Respondents and other Defendants, while acting under color of law and in conspiracy, one with the other and with other unknown individuals, have exiled some of the Petitioners from Lafayette Parish by transferring their place of residence to Vermilion Parish, Louisiana, without notice or an opportunity to be heard in violation of their property and liberty rights and in violation of the guarantee to the equal protection of the law.

Lafayette and Vermilion Parishes are political subdivisions of the State of Louisiana and they adjoin each other with a common boundary, Lafayette Parish existing to the north of Vermilion Parish. By Act No. 81 of 1844, the Legislature of Louisiana created Vermilion Parish by carving out a portion of Lafayette Parish. Eighty-six years after Vermilion Parish was created, the officials of Vermilion Parish attempted to establish the boundary between Lafayette Parish and Vermilion Parish through a survey as authorized by La. R.S.A. §§ 50:221 et seq. Lafayette Parish refused to engage in the survey necessary to establish the boundary between these two parishes. Vermilion Parish unilaterally pursued such a survey, which was commenced on April 27, 1931. But in 1935, the accuracy and reliability of the boundary established by the unilateral survey of Vermilion Parish

became the subject of a lawsuit that was eventually presented to the courts of Louisiana. In *Commercial Bank v. Meaux*, 158 So. 688 (La. Ct. App. 1935), the court ruled that the survey made by Vermilion Parish was inadequate and wholly unreliable because the benchmarks set forth in the 1844 legislation no longer exist.

Subsequent to that decision and not later than 1944, the landowners and the officials and agencies of Lafayette Parish have treated that section in which Petitioners now reside and where their predecessors then resided, which is along the boundary between Lafayette and Vermilion Parishes, as lying wholly within Lafayette Parish. As a result, Petitioners and their predecessors have been recognized as residents of Lafayette Parish by virtue of the legal maxim "*L'erreur commune fait le droit*," continuously and uninterruptedly since at least 1944. The recognition that the Petitioners are residents of Lafayette Parish has numerous manifestations: The Petitioners' real property has been assessed and taxed by Lafayette Parish; homestead exemptions were granted the Petitioners by Lafayette Parish; the Lafayette Parish Registrar of Voters has included the Petitioners and their predecessors on the parish rolls of registered voters; and public services, including schooling and fire and police protection, have been provided the Petitioners by Lafayette Parish.

Petitioners further affirmatively allege that Article 6, § 1 of the Louisiana Constitution, adopted in 1974, established and ratified parish boundaries as of the date of adoption. The complaint further alleges that the Defendants, in furtherance of a conspiracy among them, are at work to change, alter, and/or modify the existing boundary ratified by the State Constitution in such a manner as to remove Petitioners as residents of Lafayette Parish and to make them residents of Vermilion Parish. The methodology being employed by these Defendants to exile Petitioners from Lafayette to Vermilion Parish engages them in making measurements and surveys to bring about a change in the existing boundary. This these Defendants are doing, knowing that the existing boundary which places Petitioners wholly within Lafayette Parish may be changed only by special elections to be held in both Lafayette and Vermilion Parishes and only when two-thirds of the total vote cast at such an election in each parish is in favor of changing the boundary. The conduct and plot of the Defendants deprives the Petitioners of liberty and property without due process of law, violates the constitutional guarantee to equal protection of the law, and infringes upon the Petitioners' First Amendment associational rights.

Moreover, the Attorney General of Louisiana, Defendant Ieyoub, acting through his assistant, Defendant LaPlace, directed the Registrar of Voters of Lafayette and Vermilion Parishes to exile from Lafayette

Parish members of the Duhon family, Petitioners herein, by removing them from the voter registration rolls in Lafayette Parish and by entering them as voters into the Registrar of Voters records of Vermilion Parish, with the result that the Duhons are no longer residents of Lafayette Parish.

In August 1999, Linda Duhon, wife of Petitioner Aaron Duhon, qualified as a candidate in opposition to Defendant Lenwood Broussard for a seat on the city council of the Consolidated Government of Lafayette. Defendant Broussard resorted to the state courts to beat back this challenge to his incumbency, filing an action against Linda Duhon to void her candidacy and declare her to be a resident of Vermilion Parish and ineligible for office in Lafayette Parish. The Louisiana courts eventually entered a judgment solely against Linda Duhon determining that she was not eligible to run for office in Lafayette Parish. *Broussard v. Duhon*, 748 So. 2d 14 (La. Ct. App. 1999). The complaint alleges that because of and in retaliation for Linda Duhon's attempt to exercise her First Amendment right to challenge Defendant Broussard, Defendants Ieyoub and LaPlace, in furtherance of the conspiracy, transferred Petitioners Aaron Duhon, Adola Duhon, Sidney Duhon, and Christine Duhon from the registered voter rolls of Lafayette Parish to the voter rolls of Vermilion Parish, in violation of their First Amendment rights. The

Petitioners also alleged a cause of action under Louisiana law for intentional infliction of emotional distress .

Soon after the action was commenced, the Lafayette Defendants and the State Defendants filed motions to dismiss under Fed. R. Civ. P. 12(b) and/or for summary judgment under Fed. R. Civ. P. 56. The Petitioners filed their own motion for summary judgment and a motion day was set for hearing those motions by the District Court.

In support of their summary judgment motion, the Petitioners submitted the affidavit of Don Bertrand, a resident-citizen of Lafayette Parish who has been involved in public affairs. Bertrand had a conversation with Defendant Hubert Faulk, a member of the Police Jury of Vermilion Parish, regarding the ongoing effort on the part of the Defendants in this lawsuit to alter the boundary of Lafayette and Vermilion Parishes. Faulk admitted that there was an ongoing effort to affect the boundary between Lafayette and Vermilion Parishes. Defendant Faulk stated that about a month previous to June 26, 2000, he attended a meeting between some jurors of Vermilion Parish and some members of the Lafayette Consolidated Government, Defendant Walter Comeaux, President of the Lafayette Consolidated Government and the civil engineers of both Lafayette and Vermilion Parishes regarding the altering of the boundary between Lafayette and Vermilion Parishes. When asked whether

or not notes concerning this meeting were in existence, Faulk affirmatively stated that no notes were taken, "there wasn't a quorum" and it was just a meeting of these people. Faulk additionally stated that Gene Sellers, Civil Engineer employed by the Police Jury of Vermilion Parish had papers in his possession that related to the boundary between the parishes and that Bill Campbell, Engineer for the Lafayette Consolidated Government was also involved in the effort relating to the boundary mentioned. Faulk affirmatively stated that the State of Louisiana, Vermilion and Lafayette Parishes have basically signed off on the boundary between Lafayette and Vermilion Parishes and that the "State is going to come and survey and put where the markers should be or where the line" between the parishes exists. (A-40, -41.) Faulk further stated that in some areas the boundary "will probably change dramatically" and that there would be "a big change" of the boundary "over or to the right of 343." Faulk further stated that the boundary change would affect many people as to where they will vote, where people go to school, and also as to the assessment of property. (A-41, -42.) Further, Faulk stated that Adola Road will end up in his district as police juror of Vermilion Parish and that he, Faulk, will have to maintain that property, which he was not then maintaining. He further stated that people who will be transferred from Lafayette Parish to Vermilion Parish as a result of the boundary change, should they wish to build new homes in the area would find the "building

codes" of Vermilion Parish to be "definitely more lax than Lafayette Parish." (A-42, -43.)

On June 27, 2000, Bertrand had a conversation with Defendant Bill Campbell, known to him as the Civil Engineer who functions on behalf of Lafayette Consolidated Government. Campbell stated that there was an ongoing movement regarding the boundary between Vermilion and Lafayette Parishes and, said Bill Campbell, an ordinance was going to be introduced at the next council meeting of the Lafayette Consolidated Government, scheduled for July 5, 2000, to appropriate money to conduct a survey and have the "State Land Office survey the two little areas" between Lafayette and Vermilion Parishes. Campbell further stated that when the two parishes agree to go along with that survey, the State Land Office will "do the survey for us and they'll identify it in the field and on the map, it'll say, okay this is where the boundary line really is." Campbell stated that once the State has conducted the survey "we're going to then adopt it saying, yes that's where it is. Then it's going to be left up to the tax assessors and every body to make sure that they're assessing the right people." Campbell further asserted that the State has already submitted a price for the survey and that the State wants the "two parishes to share the costs and the two parishes to agree to accept what they come with." Campbell further informed Bertrand that posted signs have been moved, saying, "Vermilion Parish moved the signs in

Vermilion on the Lafayette/Vermilion side on parishes roads and they've requested the State DOTD to move the ones on the State routes which they've done it from what I understand." (A-43, -44.)

On June 22, 2000, Bertrand had a conversation with Defendant Mike Langlinais, Assessor of Vermilion Parish, regarding the boundary between Lafayette and Vermilion Parishes and the effect of changing such boundary. When asked whether or not there had been any changes in the Assessor's office as to any people near the boundary between Lafayette and Vermilion Parishes, Langlinais responded that there had not been any such changes because he was waiting until the "State established the line." When that line is established, he stated it would then be his job to assess all property within the Vermilion Parish boundary. When asked how many people Langlinais thought would be affected by any change in the boundary, he estimated that such changes would affect some "two hundred something people, I'm sure." Langlinais told Bertrand that he, Langlinais, had told his staff "today" that "we had to transfer Mr. Duhon because of the courts." Then speaking of the prospective change of the boundary, Langlinais said "I feel so sorry for the people along there. There is a lot, especially for the children, you know-going to school here, school there." Finally, Langlinais made the further observation that "you know, you pay taxes for thirty years on roads, buildings, and what have you and

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it's kind of hard to say, well you don't have any thing to do with that anymore." (A-44, -45.)

On June 22, 2000, Don Bertrand had a conversation with Defendant Mike Bertrand, a member of the Vermilion Parish Police Jury. In speaking of the prospective altering of the boundary between Lafayette and Vermilion Parishes, Don Bertrand asked Mike Bertrand who was going to conduct the survey of the boundary in question and he stated that it would be the "State Land Office." Mike Bertrand further stated as to that survey, "[W]e sent a letter to the State Land Office authorizing our proportion and share of the costs to do the actual survey." When asked whether or not the State Land Office would contract within anyone to conduct the survey, Mike Bertrand responded "No, they have their own personnel." The said Mike Bertrand further stated that there was a meeting between some of the police jurors of Vermilion Parish and representatives of the Lafayette Consolidated Government and they met to make sure everybody understood and that Lafayette Consolidated Government was going to pay its share of the costs for the survey. He further stated that the State Land Office would not start with such a survey until such time as it gets "a letter from Lafayette Parish saying that they're going to sign off on it and, you know approve their share. As soon as that's done, then they'll schedule it with their other work, I'm sure, so, I think within the

next three to six months we should have something done." (A-45, -46.)

On June 22, 2000, and again on June 26, 2000, Don Bertrand had a conversation with Defendant John Evans of the State Land Office of Louisiana. The conversation related to the reestablishing of the boundary between Lafayette and Vermilion Parishes. John Evans stated that it was true he had discussed with representatives of Lafayette and Vermilion Parishes the fact that there were a couple of areas where the parish boundary was kind of a "real vague description and the location of that boundary has always been a, you know, fairly indefinite line as exactly where that boundary is." Evans further stated that representatives of Lafayette and Vermilion Parishes had come to the State Land Office with a proposal to help these parishes to put something down that would support a "boundary agreement for them on a couple of their parish locations." (A-47.)

During Bertrand's conversation with John Evans on June 26, 2000, Evans said that he talked to Bill Campbell and Gene Sellers about the boundary between Lafayette and Vermilion Parishes and also that the said Sellers and Campbell had been talking to Evans' predecessor and that the discussion about the Lafayette/Vermilion Parish boundary has been going on back and forth for some time. Evans further stated that he had not been out of his office to look at any of the

information concerning the boundary in question because he wanted to wait until "we got everything squared away from those guys before we decided to go out and do anything at all." And he referred to those guys as including Campbell. Bertrand further stated under oath that during his conversation of June 26, 2000, with Defendant police juror, Hubert Faulk, the said Faulk volunteered that "what started" this effort regarding the boundary between Lafayette and Vermilion Parishes was the lawsuit between Lenwood Broussard and Linda Navarre Duhon. (A-47, -48.)

On March 27, 2001, the District Court issued a memorandum ruling and judgment granting the motions of the Lafayette Defendants and State Defendants and denying the Petitioners' motion. The District Court rejected the Petitioners' contention that under the maxim *L'erreur commune fait le droit* (common error makes the law) their homes were within Lafayette Parish, and they could not be removed to Vermilion Parish except in accordance with procedures mandated by state law for the change of a parish boundary. The District Court, although accepting the applicability of the maxim, ruled that the Respondents and other Defendants were not attempting to change the boundary, but only acting to determine where the boundary actually lay. (A-21.) The District Court also determined that the Petitioners could not rely upon *L'erreur commune fait le droit* to support their claims because a state court decision involving two

persons who were not parties to the instant case had made a determination concerning the location of the disputed boundary. (A-24.)

The District Court went on to grant judgment to the Lafayette and State Defendants on the basis of their summary judgment motions, holding that the Petitioners' complaint failed to set forth facts showing the Respondents caused or threatened to violate any "clearly established constitutional rights" of the Petitioners. (A-27.) It also found that individual defendants were fulfilling legislative functions and were entitled to absolute immunity (A-32) and that the individual defendants were entitled to qualified immunity. (A-35.)[1] The District Court held that it did not have jurisdiction over the related state law claims brought by the Petitioners against the Respondents. (A-36.)

The Vermilion Defendants, Respondents herein, filed motions to dismiss and/or for summary judgment as to all of the Petitioners' claims. That motion was granted on June 27, 2001 without opinion. (A-6, -7.) On

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[1]Judgment on the basis of qualified and absolute immunity was granted notwithstanding the fact that the Petitioners' complaint sought not just damages and compensatory relief, but declaratory and equitable relief in the form of a prohibitory injunction.

July 13, 2001, Respondent Price filed his motion to dismiss and/or for summary judgment which was granted in a memorandum ruling and judgment entered July 17, 2001. In that ruling, the District Court referred to its March 27, 2001 ruling involving the Lafayette and State Defendants and wrote that "the Court granted a similar motion filed by the 'Vermilion Parish defendants' based on its March 27, 2001 Ruling. Accordingly, based on the reasons contained in the motion and memoranda before the Court as well as the Court's Memorandum Ruling dated March 27, 2001," the District Court granted Price's motion to dismiss and/or for summary judgment. (A-9.)

The Petitioners appealed the judgments in favor of the Respondents to the United States Court of Appeals for the Fifth Circuit. In a per curiam opinion and order filed January 31, 2002, the Court of Appeals affirmed the judgment in favor of the Vermilion Defendants writing that the Petitioners "have failed to demonstrate a genuine issue of material fact with respect to their allegations that there existed a conspiracy to change the parish boundary." (A-4.)

The Court of Appeals affirmed the judgment in favor of Petitioner Price on the ground that there was a failure to allege a violation of a constitutional right by Price. It held that "[a]lthough Plaintiffs contend that 'changing' of the parish boundary violate their rights to

due process, equal protection, and association, they make no contention that remotely suggests a constitutionally prohibited act by Price." (A-4, -5.)

ARGUMENT

I. THE PETITIONERS PRESENTED SUBSTANTIAL EVIDENCE SUPPORTING THE EXISTENCE OF A CONSPIRACY TO EFFECT A COVERT AND EXTRA-LEGAL CHANGE OF THE PARISH BOUNDARY BY THE RESPONDENTS AND OTHERS.

Although the District Court never indicated in any of its opinions or orders disposing of the claims brought by the Petitioners that there was no evidence of a conspiracy among the several Defendants named in the Petitioners' complaint, the Court of Appeals affirmed the judgment in favor of the Respondents on that basis. The Fifth Circuit wrote that the Petitioners "have failed to demonstrate a genuine issue of material fact with respect to their allegation that there existed a conspiracy to change the parish boundary," and so upheld the judgment in favor of the Vermilion Defendants. (A-4.) This was the sole basis for the Court of Appeals' affirmance of the judgment in favor of the Vermilion Defendants.

The Court of Appeals clearly overlooked substantial evidence demonstrating a clandestine agreement among the several Defendants, including the Respondents herein, in the form of the affidavit of Don Bertrand. As recounted *supra*, Bertrand attested to secret meetings among the Vermilion and Lafayette Parishes' officials in which the officials came to an agreement as to where the boundary line between the parishes would be placed. (A-41, -42.) Indeed, Defendants Herbert Faulk and William Campbell admitted to Bertrand that there was an effort afoot to change the boundary between the parishes. (A-41, -43.) Campbell also admitted that signs had been moved by parish officials in order to begin the boundary change. (A-44.) And Mike Bertrand and John Evans admitted that there had been meetings and discussions between officials of the parishes with respect to an agreement as to where the boundary should be placed. (A-46, -47.)

Don Bertrand's affidavit surely was sufficient to prevent summary judgment on the issue of whether a conspiracy exists. The allegations of the complaint and evidence of record show that a covert action is afoot to change the parish boundary by the simple expedient of an agreement and action among the conspirators. The District Court's memorandum ruling ignored this evidence of record and fixated on the ordinances authorizing a boundary survey. At the very least, the evidence of record certainly raises a disputed factual

issue as to whether the Defendants are engaged in a conspiracy covertly to change the boundary between Lafayette and Vermilion Parishes. Bertrand's affidavit clearly disputes the District Court's conclusion that this case simply involves actions by the Defendants to "clearly define" the existing boundary and the Court of Appeals' conclusion that there is no evidence of a conspiracy.

Decisions of this Court have reversed summary judgment orders on conspiracy claims where much less evidence of record supported the existence of the conspiracy. In *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970), the lower courts had granted summary judgment motions made by defendants who were alleged to have conspired to deprive the plaintiff of her civil rights when she was refused service at a store lunch counter and thereafter arrested because she sought service in the company of African-Americans. The key issue for conspiracy purposes was whether a police officer had agreed with store personnel that plaintiff be refused service and arrested, and the police officer and store personnel had submitted affidavits asserting that no agreement existed. However, the plaintiff submitted depositions and statements asserting that a police officer was in the store when service was refused. This Court held that summary judgment had been improperly granted because the defendants had not foreclosed the possibility that a police officer was in the store and had reached an understanding with store employees that the

plaintiff not be served. *Id.* at 157. "If a policeman were present, " this Court wrote, "we think it would be open to a jury, in light of the sequence that followed, to infer from the circumstances that the policeman and a Kress employee had a 'meeting of the minds' and thus reached an understanding the petitioner should be refused service." *Id.* at 158.

In *Poller v. Columbia Broadcasting System, Inc.*, 368 U.S. 464 (1962), summary judgment in a Sherman Act conspiracy case was reversed because sufficient evidence of a conspiracy existed. Although the respondents alleged that there actually was no agreement among separate entities which could constitute a conspiracy and supported this with affidavits, this Court found that there was deposition testimony of record showing that independent respondents had come to an agreement to deprive the petitioner of its broadcast network affiliation and run it out of business. This inference could be drawn from deposition testimony that one of the respondents received market information from another respondent and had a meeting with some of the other respondents. *Id.* at 469-70. While the Court admitted that the question of whether a conspiracy existed might eventually be resolved in favor of the respondents, "we cannot say on this record that 'it is quite clear what the truth is.' Certainly there is no conclusive evidence supporting the respondents' theory. We look at the record on summary judgment in the light most favorable to [the petitioner],

the party opposing the motion, and conclude here that it should not have been granted." *Id.* at 472-73.

These cases illustrate the settled principles which require that summary judgment motions be denied unless it is beyond doubt that the nonmoving party could not prevail at trial. As this Court wrote in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) (emphasis added):

> Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences for the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. *The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor. Adickes*, 398 U.S. at 158-59. Neither do we suggest that the trial courts should act other than with caution in granting summary judgment or that the trial court may not deny summary judgment in a case where there is reason to believe that the better course would be to proceed to a full trial.

To avoid summary judgment a plaintiff alleging a conspiracy need only present direct or circumstantial

evidence that reasonably tends to prove that several persons "'had a conscious commitment to a common scheme designed to achieve an unlawful objective.'" *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752, 764 (1984) (quoting *Edward J. Sweeney & Sons, Inc. v. Texaco, Inc.*, 637 F.2d 105, 111 (3d Cir. 1980), *cert. denied*, 451 U.S. 911 (1981)).[2]

The evidence the Petitioners presented below satisfied this standard. The affidavit of Don Bertrand is not merely circumstantial evidence, which was found sufficient to allow an inference of a conspiracy in *Adickes*, but is direct evidence of admissions by several of the Respondents and other Defendants of an agreement among them to change the boundary. The reason the Court of Appeals articulated for affirming the District Court's judgment cannot be accepted because it is contradicted by substantial evidence of the existence of a conspiracy. Therefore, the judgment in favor of the Vermilion Defendants must be reversed and the case remanded for a full trial on the merits.

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[2]Although *Monsanto Co.* involved review of a denial of a motion for a directed verdict in a case alleging an antitrust conspiracy, this Court has held that the standard for summary judgment mirrors that for a directed verdict. *Anderson*, 477 U.S. at 242.

II. RESPONDENT PRICE MAY BE HELD LIABLE AS A MEMBER OF THE CONSPIRACY EVEN IF NO ACT BY HIM DEPRIVED THE PETITIONERS OF A CONSTITUTIONAL RIGHT.

The Court of Appeals' decision affirming the dismissal of the claim against Respondent Malcolm Price evinces a fundamental misunderstanding of either the conspiracy claim against him and the other Defendants or of the law relating to conspiracy liability. The Petitioners' complaint alleged that Price is the Chairman of the Louisiana Tax Commission and that in that capacity Price ordered that properties owned by Petitioners John Aaron Duhon, Sidney Lee Duhon, and Adola Duhon be transferred from the tax rolls of Lafayette Parish to those of Vermilion Parish. This conduct was part and parcel of the conspiracy alleged in the complaint because it served to provide a cloak of legitimacy to the extra-legal boundary change effected by the Defendants and served to carry out the unlawful exile of the Petitioners.

That this change in tax records may not itself constitute a violation of some constitutional right, it does show Price's participation in the conspiracy which renders him liable for deprivations caused by the conspiracy. This Court recently pointed out that a conspiracy claim is not an independent cause of action,

but is the mechanism for subjecting co-conspirators to liability when one of their members committed a tortious act. *Beck v. Prupis*, 529 U.S. 494, 503 (2000). The *Beck* decision cited other cases which hold that a conspiracy allegation is a means for establishing vicarious liability for the underlying wrongful act. *Id.* at 503 (citing *Halberstam v. Welch*, 705 F.2d 472, 479 (D.C. Cir. 1983)). Thus, it is recognized that

> [t]o be liable as a conspirator you must be a voluntary participant in a common venture, although you need not have agreed on the details of the conspiratorial scheme or even know who the other conspirators are. It is enough if you understand the general objectives of the scheme, accept them, and agree, either explicitly or implicitly, to do your part to further them.

Jones v. City of Chicago, 856 F.2d 985, 992 (7th Cir. 1988). The Court of Appeals' own precedent recognizes as much, holding that a § 1983 conspiracy can furnish the conceptual spring for imputing liability from one to another. *Farrar v. Cain*, 756 F.2d 1148, 1151 (5th Cir. 1985); *Villanueva v. McInnis*, 723 F.2d 414, 418 (5th Cir. 1984).

Thus, even if Price's conduct did not itself constitute a violation of the Petitioners' constitutional

rights, this does not relieve him of any possible liability. He was a member of the conspiracy to deprive the Petitioners of their constitutional rights and committed acts which furthered the goals of the conspiracy. His membership in the conspiracy renders him responsible for the harm caused by the conduct of other conspirators which was the object of the conspiracy. *Beck*, 529 U.S. at 505-06.

The conspiracy to change the boundary of which Price is a member violates the constitutional rights of the Petitioners in several ways. First, state law contains substantive predicates that circumscribe official decisionmaking, requiring that any change in a parish boundary can only be pursuant to the approval of two-thirds of the voters of the affected parishes. Article 6, § 1(B) of the Louisiana Constitution adopted in 1974 provides that only the legislature may change parish boundaries, and then only "*if approved by two-thirds of the electors* in each parish affected voting thereon at an election held for that purpose." (Emphasis added.) La. R.S.A. § 33:141 (West 1988) requires the police juries of the affected parishes to adopt ordinances proposing a boundary change, and La. R.S.A. §§ 33:142 and 33:145 (West 1988) require that the proposed change be submitted to the electors of the parishes and approved by a two-thirds majority. These substantive predicates create a liberty interest of which the Plaintiffs may not be deprived. Liberty interests are created by virtue of state

law, *Hicks v. Oklahoma*, 447 U.S. 343, 345-46 (1980), and it is recognized that a state's failure to abide by its own statutory commands may violate a liberty interest created by virtue of that statute if the law contains "substantive predicates" that circumscribe official decisionmaking and contains "explicitly mandatory language." *Bonin v. Calderon*, 59 F.3d 815, 842 (9th Cir. 1992), *cert. denied*, 516 U.S. 1051 (1996). Indeed, the right to participate in the electoral process is a fundamental right protected by the United States Constitution, *Quill v. Vacco*, 80 F.3d 716, 724 (2d Cir. 1996), *rev'd on other grounds*, 521 U.S. 793 (1997).

It must be pointed out that the Defendants' actions in this case cannot be deemed a mere attempt to define the existing boundary between Lafayette and Vermilion Parishes. It has never been disputed in this case that both the Petitioners and the parishes involved in this case have always considered the Petitioners to be residents of Lafayette Parish. The legal maxim "*L'erreur commune fait le droit*" is firmly embedded in Louisiana jurisprudence and controls the location of parish boundaries in certain circumstances:

> It is the well-established law of this State that, where a boundary between two parishes has never been surveyed and established by conjoint survey and a certain section has been treated by parochial authorities and the owners as

> lying wholly within one of the parishes, the Court will apply the maxim "L'erreur commune fait le droit". See Cumming v. Boissat, 2 La.Ann. 794[.]

State v. Texas Co., 211 La. 326, 30 So. 2d 107, 112 (1947); *accord Comegys v. Standard Oil & Gas Co.*, 227 La. 657, 80 So. 2d 110 (1955). In *Commercial Bank v. Meaux*, 158 So. 688, 690 (La. Ct. App. 1935), the court ruled that the boundary between Lafayette and Vermilion Parishes "must be judged according to the common understanding which had existed on the subject for the last 30 or 40 years immediately preceding the suit." The boundary established by virtue of the maxim was further ratified by the adoption of La. Const. art. 6, § 1 in 1974, which provides that "[p]arishes and their boundaries as established on the effective date of this constitution are recognized and ratified."

The boundary change sought by the Defendants also is not authorized under the decision in *Broussard v. Duhon*, 748 So. 2d 14 (La. Ct. App. 1999), which involved the issue of the boundary between the parishes in the context of a challenge to the eligibility of a person to be a candidate for elective office in Lafayette Parish. None of the instant Petitioners were parties to the *Broussard* case and are not bound by the decision in that case respecting the boundary. The decision in *Meaux* establishes that a decree in an action between private

parties which involves a determination as to parish boundaries "can only establish the rights of the parties plaintiff and defendant as to certain land in contest between them. *It cannot establish the boundary between the two parishes.*" *Commercial Bank v. Meaux*, 158 So. 688, 689 (La. Ct. App. 1935) (emphasis added). Thus, *Broussard* does not justify the conspirators' plan to effect an extra-legal change in the parish boundary.

While the conspirators attempt to conceal their true purpose to impose an extra-legal boundary change by asserting that they are simply pursuing a survey to determine the true boundary established by 1844 legislation creating Vermilion Parish, this contention must be rejected because it has been judicially established that the landmarks set forth in the 1844 legislation no longer exist making a survey impossible. *Id.* at 690. Therefore, any action which results in changing the Petitioners' residence from Lafayette to Vermilion Parish must be considered a change of the boundary and can only be accomplished with the consent of voters.

Second, state law creates in the Plaintiffs a property interest to receive services from Lafayette Parish, and the Defendants' conduct deprives or threatens to deprive the Plaintiffs of this interest. Property interests arise from state law. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972). Louisiana law guarantees to persons like the Plaintiffs

fire inspection and protection services from the local governing authority. La. R.S.A. § 40:1563(C)(1) (West 2000); *see also Industrial Risk Insurers v. New Orleans Public Service, Inc.*, 735 F. Supp. 200, 205-06 (E.D. La. 1990) (municipality and fire department had a nondiscretionary public duty to property owner within the municipality).

Third, the Defendants' conspiracy is in retaliation for the exercise of First Amendment rights by Linda Navarre Duhon and is based on malice and spite, which violate the Fourteenth Amendment's guarantee to the equal protection of the law. Equal protection of the laws is violated if persons are singled out for different treatment by the government because of the exercise of constitutionally protected rights, including rights arising under the First Amendment. *Wayte v. United States*, 470 U.S. 598, 608 (1985). This Court also recognized recently that the Equal Protection Clause is violated if persons are arbitrarily and irrationally singled out for different treatment by government actors. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564-65 (2000). The conspiracy here seeks to single out the Petitioners for exile from residence in Lafayette Parish on invidious, arbitrary, and irrational bases. Fourth, the Plaintiffs' deep cultural, social, and political attachments to Lafayette Parish are the kind of associational freedoms protected from infringement by the First Amendment and which are threatened by the

Defendants' plot. *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 544 (1987).

Price is a member of the conspiracy to violate these rights and can be held responsible to the Petitioners for violations by other conspirators and Price can be ordered to refrain from committing acts which further the conspiracy.

CONCLUSION

For the reasons set forth above, the Petitioners request that a writ of certiorari issue to the United States Court of Appeals for the Fifth Circuit to review the order of that Court affirming the judgment entered in favor of the Respondents and that, after full briefing on the merits, this Court reverse that judgment and remand the case to the District Court for the Western District of Louisiana for further proceedings.

Respectfully submitted,

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(337) 233-4625
Counsel of Record for Petitioners

No. _____

In The Supreme Court of the United States

JOHN AARON DUHON, et al.,

Petitioners,

v.

POLICE JURY OF VERMILLION PARISH, LOUISIANA, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

APPENDIX

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U.S. Court of Appeals
FILED
JAN 31 2002
Charles R. Fulbruge III
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-30867
Summary Calendar

JOHN AARON DUHON, BOBBY DUHON, LINDA DESHOTELS DUHON, DIRK D. DUHON, CHRISTINA D. DUHON, RONOUS J. DUHON, GLENDA G. DUHON, SIDNEY L. DUHON, CHRISTINE A. DUHON, GRACE D. HACKNEY, JAMES H. HACKNEY, MASIL MIRE, ELLIS MIRE, JR., VICKIE D. BADEAUX, LARRY BADEAUX, BRADLEY DUHON, SHARON DUHON, RICHARD DUHON, VICKIE DUHON, ELLA M. DUHON, THOMAS LEBLANC, DINA LEBLANC, NELL R. LEBLANC, JOHN A. LEBLANC, ADOLA A. DUHON,

Plaintiffs-Appellants,

versus

CONSOLIDATED GOVERNMENT OF LAFAYETTE, ET AL.,

Defendants,

POLICE JURY OF VERMILION PARISH, RITTER TRAHAN, in the capacity of President of Vermilion Parish Police Jury, CARROLL DUHON, HUBERT FAULK, MINOS BROUSSARD, TERRY BESSARD, MARK POCHE, E.J. BROUSSARD, EDVAL J. SIMON, JR., KENNETH DEHART, LOUIS JOE HARDY, PURVIS ABSHIRE, T.J. PREJEAN, JR., MICHAEL J. BERTRAND, EUGENE SELLERS, MALCOLM B. PRICE, JR., in his capacity as Chairman of Louisiana Tax Commission, PERVIS MEAUX, also known as Pee Wee Meaux, and LUTHER HARDEE, also known as Buster Hardeel,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(00-CV-1690)

Before HIGGINBOTHAM, WIENER, and BARKSDALE, Circuit Judges:

PER CURIAM:*

In connection with their 42 U.S.C. § 1983 action claiming numerous defendants have conspired to "exile" them from Lafayette Parish by transferring their place of residence to Vermilion Parish, by changing the boundary between the Parishes, Plaintiffs challenge the summary-judgment dismissal of the Vermilion Parish Defendants and Malcolm Price, Jr., Chairman of the Louisiana Tax Commission. The genesis of this action appears to be the successful challenge by one Defendant to the residency of one of the Plaintiffs in an election for the Lafayette Parish Council. *See Broussard v. Duhon*, 748 So. 2d 14 (La. Ct. App.), *writ denied*, 747 So. 2d 1129 (La. 1999).

A summary judgment is reviewed *de novo*, applying the same standard as did the district court. *E.g., Stewart v. Murphy*, 174 F.3d 530, 533 (5th Cir.), *cert. denied*, 528 U.S. 906 (1999). Such judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits filed in support of the motion, "show that there is no genuine issue as to any *material* fact and that the moving party is

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*Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

entitled to a judgment as a matter of law". FED. R. CIV. P. 56(c) (emphasis added). "We view the pleadings and summary judgment evidence in the light most favorable to the nonmovant." *Stewart*, 174 F.3d at 533.

It goes without saying that a properly supported summary judgment motion cannot be defeated by conclusional allegations, unsubstantiated assertions, or only a scintilla of evidence. *E.g., Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc). And, a summary judgment may be affirmed on "any basis raised below and supported by the record". *Grenier v. Medical Eng'g Corp.*, 243 F.3d 200, 207 (5th Cir. 2001).

A dispute about a material fact is "genuine" if the "evidence is such that a reasonable jury could return a verdict for the nonmoving party". *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Plaintiffs have failed to demonstrate a genuine issue of material fact with respect to their allegations that there existed a conspiracy to change the parish boundary. Accordingly, we affirm the dismissal of the Vermilion Parish Defendants on that basis. *See Grenier*, 243 F.3d at 207.

We affirm the dismissal of Price on the ground that Plaintiffs have failed even to allege a violation of a constitutional right by Price. *Id.* Although Plaintiffs contend that the "changing" of the parish boundary violated their rights to due process, equal protection, and

association, they make no contention that remotely suggests a constitutionally prohibited act by Price.

AFFIRMED

FILED
USDC, WESTERN DISTRICT OF LA
ROBERT H. SHEMWELL, CLERK
DATE 06, 27, 01
BY s/

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

JOHN AARON DUHON, ET AL	CIVIL ACTION NUMBER 00-1690
VERSUS	JUDGE MELANCON
LAFAYETTE CONSOLIDATED CITY PARISH GOVERNMENT, ET AL	MAGISTRATE JUDGE TYNES

JUDGMENT

A motion for summary judgment and/or a motion to dismiss were filed by the Vermilion Parish defendants. This motion came on for hearing before this court, United States District Judge Tucker L. Melancon presiding, on June 14, 2001, and the issues having been duly heard and a decision having been duly rendered,

BEST AVAILABLE COPY

It is ORDERED, ADJUDGED AND DECREED that the motion for summary judgment and/or motion to dismiss is GRANTED, and the plaintiffs' claims against Vermilion Parish Police Jury, Ritter Trahan, Carroll Duhon, Hubert Faulk, Minos Broussard, Terry Bessard, Pervis "Pee Wee" Meaux, Mark Poche, E.J. Broussard, Edval J. Simon, Jr., Kenneth Dehart, Louis Joe Hardy, Purvis Abshire, P.T. Prejean, Jr., Luther "Buster" Hardee, Michael J. Bertrand, and Eugene Sellers, (referred to as "Vermilion Parish defendants") are DISMISSED.

Lafayette, Louisiana, June 27th, 2001.

s/
TUCKER L. MELANÇON
UNITED STATES DISTRICT JUDGE

June 28, 2001
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

John Aaron Duhon, et al	Civil Action No. 6:00-1690
versus	Judge Tucker L. Melançon
City of Lafayette, et al	Magistrate Judge Tynes

MEMORANDUM RULING AND JUDGMENT

Before the Court is a Motion To Dismiss And/Or Motion For Summary Judgment filed by Malcolm B. Price, Jr., Chairman of the Louisiana Tax Commission in which Price adopts by reference the law and arguments set forth in the motions to dismiss and motions for summary judgment and any memorandum in support thereof which have been filed in this case by any other defendants. Specifically, Price asserts that because his only act in this matter was to order the deletion of the property in question from the Lafayette Parish tax rolls because said property was improperly assessed in

Lafayette Parish and to order the subject property to be assessed in Vermilion Parish and placed on the supplemental tax roll for 1999 (Orders 516 - 519), Price has absolute and/or qualified immunity for his actions.

On March 27, 2001, the Court entered a Memorandum Ruling and Judgment based on the motions and memoranda filed by other defendants in this action whose arguments Price now adopts. Also, on June 14, 2001, the Court granted a similar motion filed by the "Vermilion Parish defendants" based on its March 27, 2001 Ruling.[1] Accordingly, based on the reasons contained in the motion and memoranda before the Court as well as the Court's Memorandum Ruling dated Marsh 27, 2001,

IT IS ORDERED that the Motion To Dismiss And/Or Motion For Summary Judgment filed by Malcolm B. Price, Jr. [Rec. Doc. 103] is GRANTED and plaintiffs' claims against Malcolm B. Price, Jr. are DISMISSED WITH PREJUDICE.

---

[1]Counsel for plaintiffs indicated that they have nothing more to add to their previous memoranda in opposition to defendants' motions. *See, Transcript of June 14, 2001 hearing.*

Thus done and signed this 16th day of July, 2001 at Lafayette, Louisiana.

s/
Tucker L. Melançon
United States District Judge

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July 17, 2001
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

John Aaron Duhon, et al	Civil Action No. 6:00-1690
versus	Judge Tucker L. Melançon
City of Lafayette, et al	Magistrate Judge Tynes

MEMORANDUM RULING

Before the Court is a motion to dismiss filed by defendants Richard P. Ieyoub, Louisiana Attorney General, Angie Rogers LaPlace, Assistant Louisiana Attorney General, John Evans, Chief, Titles & Survey, State Land Office, Louisiana Division of Administration, Steven Bernard, Registrar of Voters for Lafayette Parish and Corbet J. Domingues, Registrar of Voters for Vermilion Parish, (hereinafter referred to collectively as "the Louisiana State defendants") [Rec. Doc. 19]; motions to dismiss, or in the alternative, motions for summary

judgment filed by Lafayette Consolidated Government[1], Walter Comeaux, Parish-President, council members including Bobby Badeaux, Bobby Castille, Chris Williams, Louis Benjamin, Jr., Lenwood Broussard, Jerry Trumps, Mrc Mouton, Rob Stevenson, and Randall L. Menard, and the Assistant Director of Public Works, B. William Campbell, (hereinafter referred to collectively as "the Lafayette Parish defendants") [Rec. Doc. 8] and by Michael G. Langlinais, Vermilion Parish Assessor, [Rec. Doc. 51; 52] and a cross motion for summary judgment filed by all plaintiffs [Rec. Doc. 28]. The following defendants did not file separate motions but oppose plaintiffs' motion for summary judgment: the Police Jury of Vermillion Parish, Ritter Trahan, Carroll Duhon, Hubert Faulk, Minos Broussard, Terry Bessard, Mark Poche, E.J. Broussard, Edval J. Simon, Jr., Kenneth Dehart, Louis Joe Hardy, Purvis Abshire, T.J. Prejean, Jr., Michael J. Bertrand, Eugene Sellers, Pervis Meaux aka Pee Wee Meaux and Luther Hardee aka Buster Hardee (hereinafter collectively referred to as "the Vermilion Parish defendants") [Rec. Doc. 49]; and, Malcolm B. Price, Jr., Chairman of the Louisiana Tax Commission [Rec. Doc. 58]. For the reasons that follow, the defendants'

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[1]The Lafayette Parish defendants represent that the Consolidated Government of Lafayette was incorrectly designated as "Lafayette Consolidated City-Parish Government."

motions will be granted and the plaintiffs' cross motion will be denied.[1]

I. Background

Plaintiffs in this action are the husband and neighbors of Linda Navarre Duhon. Duhon qualified to run against Lenwood Broussard for the position of Parish Council member for District 5 of the Lafayette City-Parish Council. Lenwood Broussard filed suit in state court against Duhon, contending that she did not reside in Lafayette Parish. The district court for the Parish of Lafayette held that Adola Road was located in Vermilion Parish rather than Lafayette Parish, and therefore, Linda Duhon did not meet the qualifications of residence and

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[1]Plaintiffs also filed a Motion To Strike The Statement Of Undisputed Material Facts Filed By The Lafayette Consolidated Government, et al Through Its Attorney Of Record Patrick M. Wartelle, Esq. [document no. 61], contending that defendants asserted "legal conclusions, argumentative statements, non-sequitur statement and speculation statements" which fail "to contradict the undisputed material facts set forth in paragraph [sic] of the original Complaint." The Court has applied the Rule 56 summary judgment standard in reviewing all of the evidence *sub judice* and accepted only facts which conform therewith. Therefore, plaintiffs' motion to strike will be denied.

domiciliary status to run for office in Lafayette Parish because she lived in Vermilion Parish. The Louisiana Third Circuit Court of Appeal affirmed the district court on September 21, 1999, *Broussard v. Duhon*, 748 So.2d 14 (La. App. 3 Cir. 1999) and the Louisiana Supreme Court denied writs on September 24, 1999, *Broussard v. Duhon*, 747 So.2d 1129 (La. 1999).[2] Thereafter, on November 17, 1999, the Tax Commission for the State of Louisiana issued forms entitled "Authority to Change Assessment Roles" ordering the deletion of the property of four of the instant plaintiffs, John Aaron Duhon, Sydney Lee Duhon, Adola Arabie, et al and Adola Arabie, from the tax rolls of Lafayette Parish, indicating that those plaintiffs' properties were located in Vermilion Parish.

Plaintiffs filed this action on July 18, 2000 pursuant to 42 U.S.C. § 1983 asserting constitutional violations under the Fourteenth Amendment's Due Process Clause and Equal Protection Clause and the right of association under the First and Fourteenth Amendments. *(R. 1; 28).* In their complaint, plaintiffs contend that "since on or

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[2]The Court takes judicial notice of the entry of judgment in *Broussard v. Duhon*, 748 So.2d 14 (La. App. 3 Cir. 1999), *writ denied*, 747 So.2d 1129 (La. 1999) under Fed.R.Evid. 201. *See, Colonial Leasing Co. of New England, Inc. v. Logistics Control Group, Int'l*, 762 F.2d 454, 459 (5th Cir. 1985).

about October, 1999, the defendants have entered into a conspiracy to exile complainants from their homeland in Lafayette Parish." *Id.* Plaintiffs assert that the "exile" was "for purely political reasons" and is "in direct contravention of Louisiana statutes and constitutional provisions which establish substantive and procedural rights respecting the change of parish boundaries [], and is a response to the qualification of Linda Duhon...." *(R. 34).* Plaintiffs also asserted state law claims for emotional distress.

II. Standard of Review
A. Motion for Summary Judgment

A motion for summary judgment shall be granted if the pleadings, depositions, and affidavits submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Fed. R. Civ. P. 56.* When a party seeking summary judgment bears the burden of proof at trial, it must come forward with evidence which would entitle it to a directed verdict if the evidence were uncontroverted at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). As to issues which the non-moving party has the burden of proof at trial, the moving party may satisty this burden by demonstrating the absence of evidence supporting the non-moving party's claim. *Celotex Corp.*, 477 U.S. at 324.

Once the movant produces such evidence, the burden shifts to the respondent to direct the attention of the court to evidence in the record sufficient to establish that there is a genuine issue of material fact requiring a trial. *Celotex Corp.*, 477 U.S. at 322-23. The responding party may not rest on mere allegations made in the pleadings as a means of establishing a genuine issue worthy of trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). If no issue of fact is presented and if the mover is entitled to judgment as a matter of law, the court is required to render the judgment prayed for. *Celotex Corp.*, 477 U.S. at 322; *Fed. R. Civ. P. 56(c)*. Before it can find that there are no genuine issues of material fact, however, the court must be satisfied that no reasonable trier of fact could have found for the non-moving party. *Id.*

B. Motion To Dismiss

A motion to dismiss requires the Court to test the formal sufficiency of the statement of the claim for relief. *Doe v. Hillsboro Indep. Sch. Dist.*, 81 F.3d 1395, 1401 (5th Cir. 1996). "A motion to dismiss 'may be granted only if it appears that no relief could be granted under any set of facts that could be proven consistent with the allegations'." *Meadowbriar Home for Children, Inc. v. G.B. Gunn*, 81 F.3d 521, 529 (5th Cir. 1996) (citing *Bulger v. United States Bureau of Prisons*, 65 F.3d 48, 49 (5th Cir. 1995)). The allegations in the complaint are accepted by

the district court as true and any ambiguities or doubts regarding the sufficiency of the claim are resolved in favor of the plaintiff. *Jefferson v. Lead Industries Ass'n, Inc.*, 106 F.3d 1245, 1250 (5th Cir. 1996). The complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiffs cannot prove any set of facts in support of their claim that would entitle them to relief. *Id.*

Analysis

While defendants and plaintiffs have filed separate motions, the issues raised in the motions are identical as to all of the parties and the motions will be considered together. Prior to addressing the issues set out by defendants in their motions, the Court will consider the plaintiffs' claims in their motion for summary judgment.

A. Plaintiffs' Motion For Summary Judgment

In their complaint and amended complaints, plaintiffs request injunctive relief as well as damages for defendants' alleged actions in violation of plaintiffs' constitutional rights. Plaintiffs allege that defendants violated their constitutional rights when they conspired to change the boundary between Vermilion Parish and Lafayette Parish resulting in Adola Road being located in Vermilion Parish rather than Lafayette Parish. Plaintiffs also allege they were damaged by the defendants'

various actions related to the authorization of a ground survey in order to identify the proper boundary of Vermilion Parish and Lafayette Parish, as originally set out by the Louisiana Legislature in 1844. While plaintiffs' contend that all defendants were involved in a conspiracy to "exile" plaintiffs from Lafayette Parish, plaintiffs' claims against the Lafayette Parish defendants and the Vermilion Parish defendants are based on their authorization of the boundary survey. *(R. 1, ¶¶ 15-18).* The basis for plaintiffs' claims against the Louisiana State defendants is the removal of the names of the aforesaid four plaintiffs from the list of registered voters of Lafayette Parish and the transfer of their registrations to vote to Vermilion Parish. *(Id. at ¶¶ 19-20).* Plaintiffs' claims against defendant Malcolm B. Price, Jr., Chairman of the Louisiana Tax Commission, and defendant Michael G. Langlinais, Vermilion Parish Tax Assessor, are apparently[3] based on the deletion of the four plaintiffs' properties from the Lafayette Parish tax rolls and the placement of the properties upon the tax rolls of Vermillion Parish for the tax year ending December 31, 1999.

Plaintiffs contend that the boundary lines in question must be defined by the legal maxim *l'erreur*

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[3] The Court is unable to locate any specific claims against defendants Price and Langlinais in plaintiffs' complaint or amended complaints. *(R. 1;3;69).*

commune fait le droit as noted by the Louisiana Supreme Court in *Comegys v. Stanolind Oil and Gas Co.*, 80 So.2d 110, 115-16 (La. 1955),

> Whenever an issue arose between adjoining parishes over the location of their statutory boundary lines and which had never been defined on the ground; or, where there arose a contest between landowners adjoining said boundary line, due to an uncertainty as to which court should entertain jurisdiction thereof, we have consistently held that the consideration and acceptance of landowners in that area adjoining the boundary line, and that of parish officials and official agencies, including proof of the levying and collection of taxes, was admissible proof, and that the judge before whom the suit has been originally instituted should hear and consider all relevant facts for the purpose of determining the extent of the territorial jurisdiction over which he presides. Our jurisprudence in that respect is founded on the maxim "*L'erreur commune fait le droit.*"

Plaintiffs allege that under *L'erreur commune fait le droit* they are residents of Lafayette Parish because the section

where they reside has been regarded and treated as being within Lafayette Parish. Plaintiffs further allege that because the boundary was established under *L'erreur commune fait le droit*, defendants failed to comply with applicable Louisiana law when they "changed" the boundary line in question.

Contrary to the position taken by plaintiffs, the court in *Comegy* clearly stated, "[w]e have consistently held that, where the boundary lines of adjoining parishes have been previously defined by statute, though never established by actual survey on the ground, and where issue arose between two parishes as to the true location of the boundary, the provisions of Act 40 of 1855 [La. R.S. 50:221-224] were all-exclusive to the extent that the procedure outline therein must first be resorted to and be exhausted as a remedy before recourse can be had in the courts." *Id.* It is uncontested that this case involves a situation in which "the boundary lines of adjoining parishes have been previously defined by statute, though never established by actual survey on the ground" and that "issue arose between [the] two parishes as to the true location of the boundary." *(R.1, ¶ 4).* Under *Comegy*, defendants were required to apply the provisions of Act 40 of 1855, now La. R.S. 50:221-224, in order to clearly establish the boundary between Lafayette and Vermilion Parishes. While plaintiffs contend that defendants should have applied La. R.S. 33:141-146, these statutes pertain to situations in which a parish desires to change

or create new parish lines and/or establish a new parish seat. La. R.S. 33:141-146. The record does not reflect any action taken by defendants to alter, change, or amend the parish boundary lines. Rather, the facts of this case, as provided by the record, indicate that defendants sought to survey and clearly define the existing boundary because uncertainty in the interpretation of the boundary between the adjoining parishes of Lafayette and Vermilion had existed for a number of years. While the official map for Lafayette Parish of 1987 showed that Adola Road, the area in dispute, was within Lafayette Parish, a written description of the parish boundary line prepared in 1944 by the Louisiana Department of Public Works revealed that Adola Road was in Vermilion Parish. *See, Broussard v. Duhon*, 748 So.2d 14, 15 (La.App. 3 Cir. 1999). Also, the official map of Vermilion Parish of 1996 showed that Adola Road was within the geographical boundaries of Vermilion Parish an the official map of Lafayette Parish of 1998 showed that Adola Road was south of the Lafayette boundary line in Vermilion Parish. *Id.* The record further indicates that the need to survey the boundary lines between Lafayette and Vermilion Parish had been recognized as early as the 1980's. *(R. 9, Exh. A, Aff. Of William Campbell).*

Under Louisiana law, "Act 40 of 1855 prescribes the sole method of ascertaining and defining boundary lines between adjoining parishes." *Comegys v. Stanolind Oil and Gas Co.*, 80 So.2d 110, 115 (La. 1995). Act 1855,

No. 40 was reenacted as La. R.S. 50:221-224.[4] See LSA-R.S. 50:221-224. La. R.S. 50:221, establishes the method by which adjoining parishes may ascertain and fix boundary lines:

> Whenever the governing authority of any parish desires to ascertain and fix the boundary line of any adjoining parish, it shall pass an ordinance to that effect fixing a time and place for starting the running of the boundary. It shall then serve the presiding officer of the governing authority of the adjoining parish with a copy of the ordinance and with notice, at least six months in advance, of the time and place of starting the running of the boundary.

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[4]La. R.S. 50:222 provides that"[a]fter a boundary line has been run and marked as prescribed in R.S. 50:221, due return of the survey shall be made to the presiding officer of the governing authority of each parish and he shall have it filed and preserved in the office of the recorder." Sections 223 and 224 related to compensation of surveyors and a penalty for neglect of duty by surveyors in running boundary lines and were repealed by Act 1972, No. 353, § 1 and 2, respectively.

> The surveyors appointed for that purpose, or, if there were none specifically appointed, the parish surveyors of both parishes shall, at the time fixed, proceed to the running and marking of the boundary line. If the surveyor of either parish fails to attend at the time and place fixed, the other surveyor shall wait two days and if the first does not arrive within that time shall proceed to the running and marking of the boundary line.

Id.

The actions taken by the Lafayette Parish and Vermilion Parish defendants confirm that they complied with the applicable statutory requirements, Act 1855, No. 40, La. RS. 50:221-224: (1) on March 24, 1999 the Vermilion Parish Police Jury requested a proposal by the State Land Office[5] to perform the boundary survey and a proposal

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[5]Also, La. R.S. 50:121 provides, "The Register of the State Land Office may cause surveys and resurveys to be made, in order to establish or re-establish township lines, range lines, section lines, corners, and half-mile stations, where the original monuments may have been destroyed or lost or are uncertain, or where the lines, corners, or stations were never actually established."

was made for the work on April 5, 1999; (2) proposals by the State Land Office were made on June 24, 1999 and on March 6, 2000; and, (3) the Lafayette City-Parish Consolidated Government agreed to jointly fund with the Vermilion Parish Police Jury a ground survey of the existing parish line between Lafayette Parish and Vermilion Parish in order to establish the boundary line.[6] *(R. 50, Vermilion Parish Police Jury, Public Road Committee March 16, 2000 meeting; Aff. Of Campbell).* Therefore, plaintiffs cannot establish that the Lafayette Parish and Vermilion Parish defendants failed to comply with Louisiana law in their actions related to the boundary survey in this case.

Nor can plaintiffs rely on *L'erreur commune fait le droit* as the basis for their claims against the Louisiana State defendants, Michael Langlinais and Malcolm B. Price, Jr. Plaintiffs do not dispute that the trial judge in *Broussard v. Duhon,* after hearing all the relevant facts and considering *L'erreur commune fait le droit* as argued by plaintiffs, held that Adola Road was located in Vermilion Parish. Nor do they dispute that defendants' actions were based on the court's holding in *Broussard v. Duhon.*

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[6]While the survey was funded, defendants represent that it will not be initiated by the State Land Office until after the resolution of this action. *(R. 9, Exh. A, Aff. of Campbell).*

Thus, as required by the court in *Comegys*, defendants acted in accordance with the decision of "the judge before whom the suit has been originally instituted" and who heard and considered "all relevant facts for the purpose of determining the extent of the territorial jurisdiction over which he presides." *Comegys*, 80 So.2d 115-116.

B. Defendants' Motions

Defendants assert that because neither the United States Constitution nor any laws of the United States were violated, the Court does not have subject matter jurisdiction in this case and plaintiffs have failed to state a claim upon which relief may be granted under section 1983. Defendants also assert that they are entitled to immunity, either qualified or legislative, and all claims against them should be dismissed. Alternatively, defendants contend that because of the nature of this action the Court should either abstain from exercising jurisdiction as it is "purely a state political matter" or should determine that it does not have jurisdiction under the *Rooker-Feldman* doctrine as it constitutes a collateral attack or appeal of a final state court judgment.

1. Whether plaintiffs can establish a Section 1983 action

To state a claim under section 1983, "a plaintiff must (1) allege a violation of rights secured by the Constitution or laws of the United States and (2)

demonstrate that the alleged deprivation was committed by a person acting under color of state law." *Doe v. Hillsboro Indep. Sch. Dist.*, 81 F.3d 1395, 1401 (5th Cir. 1996). Plaintiffs allege that the actions of the defendants have deprived them of constitutionally protected rights under the Fourteenth and First Amendments. Specifically, plaintiffs allege violations of (1) deprivation of liberty without due process of law by conspiring to change the boundary between Lafayette and Vermilion Parishes in violation of state laws which resulted in plaintiffs being removed from the voter registration rolls of the Lafayette Parish and transferred to the voter registration rolls of Vermilion Parish; (2) their rights to equal protection of the law in that they are now being treated as residents of Vermilion Parish because Linda Navarre Duhon exercised her constitutional right to run for elective office within Lafayette; and (3) their rights to freedom of association within the political process and the school systems of Lafayette Parish. *R. 1; 28).*

To state a cause of action for deprivation of liberty without due process of law under § 1983, plaintiffs must show that they have asserted a recognized liberty or property interest within the purview of the Fourteenth Amendment, and that they were intentionally or recklessly deprived of that interest under color of state law. *Doe v. Taylor Independent School District*, 15 F.3d 443, 450 (5th Cir.1994). The equal protection clause of the Fourteenth Amendment is essentially a mandate that all

persons similarly situated must be treated alike. *Rolf v. City of San Antonio*, 77 F.3d at 828 (5th Cir. 1996). An equal protection inquiry is conducted only "if the challenged government action classifies or distinguishes between two or more relevant groups." *Id. citing City of Cleburne, Texas v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985). While the First Amendment does not in terms protect a "right of association," the Supreme Court has noted two different sorts of "freedom of association" that are protected by the United States Constitution: 1) choices to enter into and maintain certain intimate human relationships, and 2) a right to associate for the purpose of engaging in those activities protected by the First Amendment – speech, assembly, petition for the redress of grievances, and the exercise of religion." *City of Dallas v. Stanglin*, 490 U.S. 19, 24 (1989).

Plaintiffs fail to allege specific facts which constitute either a violation of clearly established constitutional rights under current law or under the law as clearly established at the time of the events in question. Defendants' actions at issue in this case were taken in light of the state court decision in *Broussard v. Duhon* or as required under the applicable state law. Plaintiffs have provided no legal authority which establishes a right to live in one parish and participate in the political processes of another, or receive public services from a parish in which one does not reside. Plaintiffs' allegations of constitutional violations of due

process, equal protection and freedom of association are without merit. Because the plaintiffs have not alleged specific facts which constitute either a violation of clearly established constitutional rights under current law or under the law as clearly established at the time of the events in question, this Court has no subject matter jurisdiction.

Although it is not necessary to address defendants' remaining assertions, the Court will assume *arguendo* that plaintiffs have stated a cause of action under section 1983 and will consider defendants' arguments of absolute immunity and qualified immunity.

2. *Whether defendants have immunity in this case*
a. Absolute Immunity

The individual Lafayette Parish defendants and Vermilion Parish defendants, Michael G. Langlinais and Malcolm B. Price, Jr. assert that they are entitled to absolute immunity in this case because they were fulfilling legislative functions[7] and all defendants, the

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[7] As the Court does not perceive any evidence in the record to indicate that defendant Campbell was fulfilling a "legislative function," the Court will not consider whether or not he is entitled to legislative immunity.

individual Lafayette Parish defendants and Vermilion Parish defendants, the Louisiana State defendants, Michael G. Langlinais and Malcolm B. Price, Jr. assert that they are entitled to qualified immunity.

Absolute immunity applies to activities, not office. *See Marrero v. City of Hialeah*, 625 F.2d 499, 508 (5th Cir.1980)("[I]t is the official function that determines the degree of immunity required, not the status of the acting officer."). Legislative immunity protects officials fulfilling legislative functions even if they are not "legislators." *Hughes v. Tarrant County Texas*, 948 F.2d 918, 920 (5th Cir.1991). Absolute immunity under section 1983 is applicable to local legislators "for conduct in the furtherance of their duties." *Hernandez v. City of Lafayette*, 643 F.2d 1188, 1193 (5th Cir. 1981). "[O]fficials seeking absolute immunity must show that such immunity is justified for the governmental function at issue." *Hafer v. Melo*, 502 U.S. 21, 27 (1991).

The record indicates that the genesis of the survey forming the basis of this action was the uncertainty in interpretation of the bounds of the parish lines in question. Further it is undisputed that the court's holding in *Broussard v. Duhon* resulted in the residents of Adola Road being defined as residents of Vermilion Parish and being placed on the tax rolls and voter registration rolls of Vermilion Parish. The issue before the Court is whether defendants were engaging in their

legislative functions when they authorized the survey of the boundary between Lafayette Parish and Vermilion Parish and/or took the actions resulting from the state court's determination that plaintiffs are residents of Vermilion Parish, and are therefore entitled to absolute immunity.

The individual Lafayette Parish defendants and Vermilion Parish defendants have the authority under Louisiana law to ascertain and define boundary lines between adjoining parishes, including causing surveys and re-surveys in order to establish and re-establish township lines, section lines corners, and half mile stations, where the original monuments have been destroyed or lost or are uncertain, or where the lines, corners, or stations were never actually established.[8] La. R.S. 50:221; La. R.S. 50:121; *Comegys v. Stanolind Oil and Gas Co.*, 80 So.2d 110, 115 (La. 1955).

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[8]Defendant Walter Comeaux, sued in his capacity as President of the Lafayette Consolidated Government, acted in a legislative capacity in approving the ordinance to set aside the necessary funds to participate with Vermilion Parish in having the State Land office survey the boundary in questions. *See, Hernandez v. City of Lafayette*, 643 F.2d 1188, 1193 (5th Cir. 1981).

With regard to the Louisiana State defendants, "[t]he 'historic function' of the states has been to establish a non-discriminatory, constitutional basis, the 'qualifications for the exercise of the franchise.'" *Ellis*, 981 F.2d at 1190, *citing Carrington v. Rash*, 380 U.S. 89, 91 (1965). Louisiana has delegated the administration and supervision of state lands including the official determination of boundaries with the Louisiana State Land Office, within the Office of the Governor, Division of Administration. La. R.S. 41:1-19; 41:1136; *and generally*, all of Title 41 of the Louisiana Revised Statutes of 1950; *See also*, 50:121. Also, Louisiana has delegated the statutory responsibility to monitor voter eligibility based on residence to the registrar of voters for each parish. *See, generally*, La. R.S. 18:51 *et seq.*, 18:58, 18:193(g) and 18:221. The Attorney General for the State of Louisiana is the legal advisor to the registrar of voters for each parish. La. R.S. 18:64.

Similarly, as to defendants Price and Langlinais, Louisiana has delegated the statutory authority to administer and enforce all laws related to state and local property tax assessments to the Louisiana Tax Commission. La. R.S. 47:1837. Tax assessors are constitutional officers, and their power and authority is statutorily defined under La. Const. art. 7, § 24 and La. R.S. 47:1903. *Triangle Marine, Inc. v. Savoie*, 681 So.2d 937, 939 (La. 1996).

While plaintiffs' complaint alleges that defendants engaged in "conspiratorial activities," the record provides that defendants were performing their legislative functions in taking the actions of which plaintiffs' complain. *See, Bennett v. City of Slidell*, 697 F.2d 657, 660 (5th cir. 1983); *Tenney v. Brandhove*, 341 U.S. 367 (1951)(An unworthy purpose, such as conspiracy or bad faith, does not remove absolute immunity protection from legislators acting in their legislative capacities). Moreover, defendants acted in compliance with the judgment of a Louisiana court interpreting Louisiana law. *Broussard v. Duhon*, 748 So.2d at 16 (stating that "the trial court did not establish or change the parish boundary line, it merely made a factual determination based on expert testimony that Ms. Duhon's home was located in Vermilion Parish").

In *Bryan v. City of Madison, Miss.*, 213 F.3d 267, 273 (5th Cir. 2000), the Fifth Circuit enumerated two guidelines to use in determining legislative immunity. "The first [] focuses on the nature of the facts used to reach the given decision. If the underlying facts on which the decision is based are 'legislative facts,' such as 'generalizations concerning a policy or state of affairs,' then the decision is legislative. If the facts used in the decision making are more specific, such as those that relate to particular individuals or situations, then the decision is administrative. The second [] focuses on the 'particularity of the impact of the state action.' If the

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action involves establishment of a general policy, it is legislative; if the action single[s] out specific individuals and affect[s] them differently from others, it is administrative." *Bryan v. City of Madison, Miss.*, 213 F.3d 267, 273 (5th Cir. 2000)(citations omitted). Based on the record in this case as well as the Fifth Circuit guidelines set out above, the actions at issue of defendants, the individual Lafayette Parish defendants and Vermilion Parish defendants, Michael G. Langlinais and Malcolm B. Price, Jr., involved "legislative facts" as well as the "establishment of a general policy", and therefore, these defendants would be entitled to absolute immunity.

b. Qualified Immunity

Defendants further assert that the claims against defendants, the Louisiana State defendants, the individual Lafayette Parish defendants and Vermilion Parish defendants, Michael G. Langlinais and Malcolm B. Price, Jr. should be dismissed on the grounds of qualified immunity. Defendants contend that they followed the judgment entered by the state district court and affirmed by the Louisiana Third Circuit Court of Appeals or the applicable state law in taking the various actions of which plaintiffs complain.

In considering defendants' qualified immunity claims, the Court "must remain cognizant of the fact that the 'qualified ... immunity doctrine was established to

reconcile two competing interests. One interest is the compensation of persons whose federally protected rights have been violated. Opposing this is the fear that personal liability will inhibit public officials in the discharge of their duties.' For that reason, 'government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.' The doctrine is generally available to government officials sued, as [defendants] here are, under § 1983. The Supreme Court enunciated a two-prong test to ascertain the viability of a government official's assertion of qualified immunity in *Siegert v. Gilley*, 500 U.S. 226 (1991). First, we must examine whether the 'plaintiff has alleged a violation of a clearly established right.' Second, we must as whether the defendants' conduct was objectively reasonable in light of 'clearly established' law at the time of the alleged violation. Objective reasonableness is a matter of law for the courts to decide[.] The touchstone of this inquiry is whether a reasonable person would have believed that his conduct conformed to the constitutional standard in light of the information available to him and the clearly established law. Therefore, '[e]ven law enforcement officials who 'reasonably but mistakenly [commit a constitutional violation]' are entitled to immunity.'" *Goodson v. City of Corpus Christi*, 202 F.3d 730, 735-6 (5th Cir. 2000)(citations omitted).

Based on the record before the Court, including the state court decision in *Broussard v. Duhon*, the Court finds that defendants' conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known, but rather was objectively reasonable in that each defendant would have believed that his conduct conformed to the constitutional standard in light of the information available to him and the clearly established law. Accordingly, defendants, the Louisiana State defendants, the individual Lafayette Parish defendants and Vermilion Parish defendants, Michael G. Langlinais and Malcolm B. Price, Jr. would be excused from any liability because they would be entitled to qualified immunity.

IV. State Law Claims

Plaintiffs also assert a cause of action under Louisiana state law and allege that defendants' actions caused them severe emotional distress. Because the Court has found that it lacks subject matter jurisdiction over plaintiffs' section 1983 claims, the Court does not have jurisdiction over plaintiffs' state law claims and they will be dismissed without prejudice. However, this Court is cognizant of the case of *White v. Monsanto*, 585 So.2d 1205, 1209 (La. 1991) and its progeny, and of the rule enunciated in *White* by the Louisiana Supreme Court that "in order to recover for intentional infliction of emotional distress, a plaintiff must establish (1) that the

conduct of the defendant was extreme and outrageous; (2) that the emotional distress suffered by the plaintiff was severe; and (3) that the defendant desired to inflict severe emotional distress or knew that severe emotional distress would be certain or substantially certain to result from his conduct" *Id.* at 1209, and finds it hard to understand, based on the record before the court, how a good faith, non-frivolous claim for damages for emotional distress could be made before the appropriate Louisiana state court.

V. Motion For Sanctions

The Lafayette Parish defendants and defendant Michael G. Langlinais filed motions for sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure, [document no. 41; 45; 46]. On November 29, 2000, the Court granted the Lafayette Parish defendants' motion to withdraw their motions for sanctions based on plaintiffs having raised defendants failure to comply with the "safe harbor" provision of Rule 11. *(R. 67; 70).* As defendant Langlinais' motion for sanctions also fails to comply with the "safe harbor" provision of Rule 11, the Court will deny the motion. *(R. 46).*

VI. Motions For Attorneys' Fees

The Lafayette Parish defendants and Michael G. Langlinais request that the Court order plaintiffs to pay

attorneys' fees incurred in this action pursuant to Title 42 of the United States Code section 1988(b). *(R. 8; 51; 52).* It is within the court's discretion to allow the prevailing party in an action brought pursuant to section 1983 a reasonable attorney's fee as part of the costs. 42 U.S.C. § 1988(b). Prevailing defendants may recover attorneys' fees "only upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation or that the plaintiff continued to litigate after it clearly became so." *Mylett v. Jeane*, 910 F.2d 296, 299 (5th Cir. 1990). That the defendant has prevailed on its summary judgment motion, alone, does not support an award of attorney's fees. *Plemer v. Parsons-Gilbane*, 713 F.2d 1127, 1141 (5th Cir.1983). The Fifth Circuit has identified the following factors as important in making the frivolity determination: (1) whether plaintiff established a prima facie case, (2) whether the defendant offered to settle, and (3) whether the district court dismissed the case or held a full-blown trial. *United States v. State of Mississippi*, 921 F.2d 604, 609 (5th Cir. 1991) *citing EEOC v. Kimbrough Inv. Co.*, 703 F.2d 98, 103 (5th Cir. 1983).

Plaintiffs' counsel in this action, J. Minos Simon, is a seasoned attorney who the Court perceives, based on previous dealings, as well as his reputation in the legal community, to be well versed in Federal Court procedure, proceedings and the applicable law as it relates to the issues raised in the lawsuit *sub judice*. Based on the foregoing analysis of the issue alleged in this

proceeding on behalf of plaintiffs by their counsel, the Court finds the action as it relates to plaintiffs' § claims to have been frivolous, unreasonable and without foundation at the time of its filing and that plaintiffs' counsel continued to litigate the matter after the frivolity clearly should have been apparent to him. The Court will therefore grant defendants' motion for attorneys' fees pursuant to 42 U.S.C. § 1988(b), **conditionally**. In part, due to the standing that plaintiffs' counsel enjoys with this Court, the Court will provide plaintiffs' counsel with an opportunity to show the Court that it is in error in its award of attorneys' fees. Plaintiffs' counsel is to file with the Clerk of this Court, on or before ten (10) days from the date of entry of this Judgment, a memorandum setting out specifically the factual, statutory and *jurisprudential* basis on which he relied for the allegations he made on behalf of plaintiffs in connection with the § 1983 claims which would establish 1) that such allegations were in fact not frivolous, unreasonable or without foundation when made and 2) that he did not continue to litigate the matter after the frivolity clearly should have been apparent. In the event plaintiffs' counsel fails to file a memorandum within ten (10) days of entry of judgment, the award of attorneys' fees shall become *absolute*. In the event plaintiffs' counsel files such memorandum, defendants may file oppositions thereto within ten (10) days of receipt of same after which the Court will set a hearing to consider the arguments of

counsel and whether the imposition of attorneys' fees is in fact appropriate under prevailing jurisprudence.

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE-OPELOUSAS DIVISION

JOHN AARON DUHON, ET AL *Plaintiffs*	CIVIL ACTION NO. CV00-1690
VERSUS	JUDGE MELANCON
LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT, ET AL *Defendants*	MAGISTRATE JUDGE TYNES JURY DEMANDED

STATE OF LOUISIANA

PARISH OF LAFAYETTE

AFFIDAVIT OF DON BERTRAND

Don Bertrand, a person of majority and a resident of Lafayette Parish, being first duly sworn, did depose and say that:

As a resident citizen of Lafayette Parish he has been interested in the public affairs of Lafayette Parish and particularly of late in the boundary of Lafayette Parish; that he is personally acquainted with Hubert Faulk and knows him to be a member of the police jury of Vermilion Parish, Louisiana, who is a defendant in the lawsuit entitled *Duhon, et al v. Lafayette City-Parish Consolidated Government, et al*, currently pending before the United States District Court under civil action number CV00-1690.

On June 26, 2000, I had a conversation with Hubert Faulk regarding the ongoing effort on the part of the defendants mentioned in said lawsuit to alter the boundary of Lafayette Parish and particularly the southern boundary of Lafayette Parish contiguous to the northern boundary of Vermilion Parish.

The said Hubert Faulk advised him (me) that indeed it was true that there was an ongoing effort to affect the boundary between Lafayette and Vermilion parishes; said Faulk affirmatively stated that the State of Louisiana and Vermilion and Lafayette parishes have basically signed off on the boundary between Vermilion and Lafayette Parish and that the "State is going to come and survey and put where the markers should be or where the line"; the said Faulk stated that in some areas the boundary "will probably change dramatically" and that there would be "a big change" of the boundary

aforesaid "over or to the right of 343"; the said Faulk further stated that "what started" this effort regarding the boundary between Lafayette and Vermilion parishes was the lawsuit between Lenwood Broussard and Linda Navarre.

The said Hubert Faulk further stated that about a month previous to June 26, 2000, he attended a meeting between some jurors of Vermilion Parish and some members of the Lafayette Consolidated Government, Walter Comeaux, President of the Lafayette Consolidated Government and the civil engineers of both Lafayette and Vermilion parishes regarding the altering of the boundary between Lafayette and Vermilion parishes; when asked about notes concerning this meeting Faulk affirmatively stated that no notes were taken, there wasn't a quorum and it was just a meeting of these people; Faulk further stated that Gene Sellers, the Civil Engineer employed by the Police Jury of Vermilion Parish had papers in his possession that related to the boundary aforesaid and Bill Campbell, Engineer for the Lafayette Consolidated Government was also involved in the effort relating to the boundary aforesaid.

The said Faulk further stated that the boundary to be effected would affect many people as to where they will vote, where people go to school and also as to the assessment of property; the said Faulk further affirmatively stated that Adola Road will end up in his

district as police juror of Vermilion Parish and that he, Faulk, will have to maintain property in that area and also the road, which he was not then maintaining; further Faulk stated that the people who will be transferred from Lafayette Parish to Vermilion Parish as a result of any boundary change and who might wish to build new homes in the area will find that the "building codes" of Vermilion Parish "are definitely more lax than Lafayette Parish."

CONVERSATION BETWEEN DON BERTRAND AND BILL CAMPBELL OF JUNE 27, 2000

I am acquainted with Bill Campbell and know him as a Civil Engineer who functions on behalf of the Lafayette Consolidate Government. I had a conversation with Bill Campbell on June 27, 2000, regarding the boundary between Lafayette and Vermilion parishes. Bill Campbell responded that there was an ongoing movement regarding the boundary between Vermilion and Lafayette parishes; that, said Bill Campbell, an ordinance was going to be introduced at the next Council Meeting of the Lafayette Consolidated Government, scheduled for July 5, 2000, to appropriate money to conduct a survey and have the "State Land Office survey the two little areas" between Lafayette and Vermilion parishes; the said Campbell further stated that when the two parishes agree to go along with that survey the State Land Office will "do the survey for us and they'll identify

it in the field and on the map, it'll say, okay this is where the boundary line really is." Once the State has conducted the survey, "we're going to then adopt it saying, yes that's where it is. Then it's going to be left up to the tax assessors and everybody to make sure that they're assessing the right people"; further the said Campbell further stated that the State has already submitted a price for the survey and that the State wants the "two parishes to share the costs and the two parishes to agree to accept what they come with"; further the said Campbell stated that posted signs have been moved, saying, "Vermilion Parish moved the signs in Vermilion on the Lafayette-Vermilion side on parishes roads and they've requested the State DOTD to move the ones on the State routes which they've done it from what I understand."

CONVERSATION BETWEEN DON BERTRAND AND MIKE LANGLINAIS, VERMILION PARISH ASSESSOR, OF JUNE 22, 2000

On June 22, 2000, I had a conversation with Mr. Mike Langlinais, the Assessor of Vermilion Parish regarding the boundary between Lafayette and Vermilion parishes and the effect of changing such boundary. When I asked Langlinais whether there had been any change in the Assessor's office as to any people near the boundary between Lafayette and Vermilion parishes, Langlinais responded that there had not been

any such changes because he was waiting until the "State establish the line"; when that line was established it would then be his job to assess all properties within the Vermilion Parish boundary; when asked how many people Langlinais thought would be affected by any change in the boundary, he estimated that such changes would affect some "two-hundred something people, I'm sure."

Langlinais further stated that he told his staff "today" when and if we transfer anybody "we had to transfer Mr. Duhon because of the courts." Then speaking of the prospective change of the boundary Langlinais said "I feel so sorry for the people along there. There is a lot, especially for the children, you know - going to school here, school there." Then Langlinais further stated "you know, you pay taxes for thirty years on roads, buildings and what have you and it's kind of hard to say well you don't have anything to do with that anymore."

CONVERSATION BETWEEN DON BERTRAND AND MIKE BERTRAND, VERMILION PARISH POLICE JUROR, ON JUNE 22, 2000

I am personally acquainted with Mike Bertrand and know him to be a member of the Vermilion Parish Police Jury and a defendant in the federal pending lawsuit herein mentioned. I had a conversation with

Mike Bertrand on June 22, 2000, regarding the boundary between Lafayette and Vermilion parishes. During the course of that conversation with the said Bertrand, I asked him who was going to conduct the survey of the boundary in question and he stated the "State Land Office." Bertrand further stated as to that survey, "we sent a letter to the State Land Office authorizing our proportion and share of the costs to do the actual survey." When asked whether or not the State Land Office would contract with anyone to conduct the survey, Bertrand responded: "No, they have their own personnel"; the said Bertrand further stated that there was a meeting between some of the police jurors of Vermilion Parish and representatives of the Lafayette Consolidated Government and they met to make sure everybody understood and that Lafayette Consolidated Government was going to pay its share of the costs for the survey. He further stated that the State Land Office would not start with such a survey until such time as it gets "a letter from Lafayette Parish saying that they're going to sign off on it and, you know approve their share. And as soon as that's done, then they'll schedule it with their other work, I'm sure, so, I would think within the next three to six months we should have something done."

CONVERSATION BETWEEN DON BERTRAND AND JOHN EVANS OF THE STATE LAND OFFICE OF JUNE 22, 2000

I am personally acquainted with John Evans of the State Land Office of Louisiana. I have discussed with him the involvement of the State Land Office in the re-establishing of the boundary between Lafayette and Vermilion parishes. In the course of that conversation, which occurred on June 22, 2000, he stated that it was true he had discussed with representatives of Lafayette and Vermilion parishes the fact that there were a couple of areas where the parish boundary was kind of a "real vague description and the location of that boundary has always been a, you know, fairly and indefinite line as exactly where that boundary is." He further stated that the representatives of Lafayette and Vermilion parishes had come to the State Land Office with a proposal to help these parishes to put something down that would support a "boundary agreement for them on a couple of their parish locations."

I had a further conversation with John Evans on June 26, 2000. During that conversation, I referred Evans to the letter dated March 6, 2000 that purported to be a proposal from Evans to the Lafayette Consolidated Government, but Lafayette had not responded. Evans further stated that it was either in December or the first part of the year 2000 that he talked to Bill Campbell and

Gene Sellers about the boundary between Lafayette and Vermilion parishes and stated that Sellers and Campbell have been talking to Evans' predecessor and the discussion about the boundary in question had been going on back and forth for some time. Evans stated that he had not been out of his office to look at any of the information concerning that boundary because he was waiting until "we got everything squared away from those guys before we decided to go out and do anything at all" and he referred to those guys as including Campbell. He further stated that he did not know whether moving of roadway signs complied with markings on the highway or roadways and he further states that "generally DOTD does locate where those crossings are" and placing such signs is "just a standard maintenance deal." He further said that a parish would place such signs along parish roads.

/s/
DON BERTRAND

SWORN TO AND SUBSCRIBED, before me, the undersigned Notary Public on the 19th day of September, 2000, at Lafayette, Louisiana.

/s/

NOTARY PUBLIC
In and For the Parish of Lafayette
State of Louisiana
My Commission Expires at Death